

## **TENTATIVE RULINGS for CIVIL LAW and MOTION**

### **May 1, 2008**

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. If no hearing is requested, the prevailing party must submit an order to the Court in accordance with Rule 3.1312 of the California Rules of Court. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at [www.yolo.courts.ca.gov](http://www.yolo.courts.ca.gov). If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department One: (530) 406-6888

#### **TENTATIVE RULING**

**Case: Capital One Bank v. Bahlman**  
**Case No. CV G 07-860**

**Hearing Date: May 1, 2008 Department One 9:00 a.m.**

Plaintiff Capital One Bank's motion for relief from dismissal is **GRANTED**. (Code Civ. Proc., § 473, subd. (b).)

#### **TENTATIVE RULING**

**Case: Centro Watt Property Owner I, LLC v. Radiological**  
**Associates of Sacramento Medical Group, Inc.**  
**Case No. CV CV 07-951**

**Hearing Date: May 1, 2008 Department One 9:00 a.m.**

Plaintiff Centro Watt Property Owner I, LLC's request for judicial notice and supplemental request for judicial notice are **GRANTED**. (Evid. Code, § 452, subd. (d).)

Radiological Associates of Sacramento Medical Group, Inc.'s Motion for Attorney's Fees is **DENIED WITHOUT PREJUDICE**. (Civ. Code, § 1717; *Hsu v. Abbata* (1995) 9 Cal.4<sup>th</sup> 863, 876.) The Court has not made a final determination of contract claims raised by the complaint, i.e., the Court did not make a final determination as to whether plaintiff has the right under the contract to relocate defendant. The only determination that the Court has made so far in this action, is that the complaint did not allege the existence of a present, judicable controversy. The Court reasoned that the lawsuit was brought prematurely, insofar as plaintiff had not attempted to exercise its rights under the relocation provision, and there was no concrete, justiciable controversy that warranted judicial intervention. Plaintiff filed a new declaratory relief action on December 18, 2007, seeking the same relief requested in this action.

### TENTATIVE RULING

Case: **Mendoza v. Gilchrist, et al.**

Case No. CV CV 07-2859

Hearing Date: **May 1, 2008** Department One **9:00 a.m.**

Defendants Mid Valley Funding & Investments', Mid Valley Real Estate's, Salvador Roas Godinez' and Noreyma Garcia's demurrer to plaintiffs' complaint on the grounds that Plaintiff Sylvia Mendoza failed to state a cause of action against them is **SUSTAINED WITHOUT LEAVE TO AMEND.** (Civ. Code, § 2079; *Coldwell Banker Residential Brokerage Company, Inc. v. Superior Court of San Diego County* (2004) 117 Cal.App.4<sup>th</sup> 158.)

Plaintiff Sylvia Mendoza was not a prospective purchaser or transferee in this action. (Complaint, Exh. B.) All the duties under the theories of liability alleged by plaintiff Sylvia Mendoza derive from the same duties and responsibilities imposed on a broker under the Civil Code to conduct a reasonably competent and diligent visual inspection of the property and to disclose to the prospective buyer all facts materially affecting the value or desirability of the property. Under any available legal theory, whether negligent or intentional, Ms. Mendoza cannot state that defendants owed her a duty of care. (*Id.*)

Defendants' demurrer to plaintiffs' fifth cause of action for negligent misrepresentation is **OVERRULED.** (*Scafidi v. Western Loan & Bldg., Co.* (1946) 72 Cal.App.2d 550, 553.) Plaintiffs stated facts sufficient to apprise defendants of what it is they are called upon to answer.

Defendants' demurrer to plaintiffs' ninth cause of action for intentional infliction of emotional distress is **OVERRULED.** (*Scafidi v. Western Loan & Bldg., Co.* (1946) 72 Cal.App.2d 550, 553.) Plaintiffs stated facts sufficient to apprise defendants of what it is they are called upon to answer.

### TENTATIVE RULING

Case: **Tee v. Cache Creek Indian Bingo & Casino**

Case No. CV CV 06-1386

Hearing Date: **May 1, 2008** Department One **9:00 a.m.**

Defendant Cache Creek Indian Bingo & Casino's motion to compel plaintiff's responses to defendant's discovery requests is **GRANTED IN PART** and **DENIED IN PART:**

Defendant's motion to compel plaintiff to serve responses to its request for production of documents, set number one is **GRANTED.** Plaintiff is **ORDERED** to serve verified responses without objections, together with any responsive documents, to defendant's request for production of documents, set number one, by May 16, 2008.

Defendant's request that plaintiff provide verified responses to defendant's form interrogatories and special interrogatories, set number one, is **DENIED.** Code of Civil Procedure section

2030.300 subdivision (c) provides that the propounding party waives any right to compel further responses to the interrogatories if he or she fails to serve notice of the motion within 45 days, with an additional five days if the responses were served by mail, of service of the responses.

Plaintiff served unverified responses to defendant's form and special interrogatories on or about November 19, 2007. Defendant filed its motion for verified responses to defendant's discovery requests on April 9, 2008, well after the statutory time limit expired. (Code Civ. Proc., § 2030.300, subd. (c).) As a result, defendant waived its right to compel further responses to the interrogatories. Defendant cites no authority that holds that the statutory time limit does not apply when unverified responses have been served.